

**THE WESTON FIRM**

GREGORY S. WESTON (239944)

JACK FITZGERALD (257370)

888 Turquoise Street

San Diego, CA 92109

Telephone: (858) 488-1672

Facsimile: (480) 247-4553

greg@westonfirm.com

jack@westonfirm.com

**BECK & LEE BUSINESS TRIAL LAWYERS**

JARED H. BECK (233743)

ELIZABETH LEE BECK (233742)

28 West Flagler Street, Suite 555

Miami, FL 33130

Telephone: (305) 789-0072

Facsimile: (786) 664-3334

jared@beckandlee.com

elizabeth@beckandlee.com

**Attorneys for Plaintiffs and the Proposed Classes**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CATS AND DOGS ANIMAL HOSPITAL,  
INC.; ASTRO APPLIANCE SERVICE;  
BLEEDING HEART, LLC; CALIFORNIA  
FURNISHINGS, INC.; CELIBRÉ, INC.;  
J.L. FERRI ENTERTAINMENT, INC.; LE  
PETITE RETREAT DAY SPA, LLC; SAN  
FRANCISCO BAY BOAT CRUISES,  
LLC; WAG MY TAIL, INC.; and  
ZODIAC RESTAURANT GROUP, INC.,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

YELP! INC.,

Defendant.

Case No: 2:10-cv-01340-VBF-SS

Pleading Type: Class Action

**PLAINTIFFS' SURREPLY &  
NOTICE OF NEW  
AUTHORITY IN OPPOSITION  
TO DEFENDANT YELP! INC.'S  
MOTION TO DISMISS  
PLAINTIFFS' FIRST  
AMENDED COMPLAINT**

Hearing Date: May 3, 2010

Hearing Time: 1:30 p.m.

Judge: Hon. Valerie Baker Fairbank

1 Defendant asserts that in *Walker v. Geico Gen. Ins. Co.*, 558 F.3d 1025 (9th  
2 Cir. 2009), the Ninth Circuit radically altered UCL standing requirements such that  
3 only parties who have suffered injuries eligible for restitution from the defendant  
4 have standing to seek injunctive relief.

5 In fact, the discussion of UCL standing in *Walker* is limited to one  
6 paragraph. The plaintiff in that action alleged no loss of money or property at all,  
7 but rather the potential loss of income if the defendant insurance company did not  
8 pay higher rates for auto repair service. Such injury, as the district court noted, did  
9 not even rise to the level of a “vested legal interest” in lost money or property.  
10 *Walker v. USAA Cas. Ins. Co.*, 474 F. Supp. 2d 1168, 1172-73 (E.D. Cal. 2007).

11 The plaintiff in *Walker* did not allege the types of losses that are traditionally  
12 addressable by restitution, arguing instead that “although he cannot establish the  
13 requisite ‘lost money or property’ for purposes of monetary relief under the UCL,  
14 he is nevertheless entitled to an injunction[.]” 558 F.3d at 1027. By failing to allege  
15 any loss of money or property, Walker failed to establish threshold standing. But  
16 once that threshold is met, a plaintiff need not go further and show she is entitled to  
17 restitution in the *specific case at bar*. Such a requirement would practically cripple  
18 the UCL.

19 One district court has already rejected an identical attempt to misconstrue  
20 *Walker*, and Judge Chesney’s reasoning is worth excerpting at some length:

21 In support of its argument, Logitech relies on *Walker v. Geico Gen. Ins.*  
22 *Co.*, 558 F.3d 1025 (9th Cir. 2009), and *Buckland v. Threshold Enters.,*  
23 *Ltd.*, 155 Cal. App. 4th 798, 66 Cal. Rptr. 3d 543 (2007), wherein  
24 standing under the UCL was stated to be limited “to individuals who  
25 suffer losses of money or property that are eligible for restitution.” See  
26 *Walker*, 558 F.3d at 1027. In so stating, however, neither *Walker* nor  
27 *Buckland* was suggesting that the only type of action that may be brought  
28 under the UCL is one for restitution, nor would such a holding be  
consistent with the language of the UCL, which, for purposes of standing,  
requires only that the plaintiff have “suffered injury in fact and [] lost

1 money or property.” Rather, those courts, by the use of the phrase  
 2 “eligible for restitution,” were endeavoring to distinguish between the  
 3 losses claimed in the respective cases before them and the type of loss  
 4 cognizable under the UCL, specifically, a loss of “money or property” in  
 5 which the plaintiff has “either prior possession or a vested legal interest.”  
 6 See *Walker*, 474 F. Supp. 2d at 1172. In particular, as determined in both  
 7 *Walker* and *Buckland*, neither of the respective plaintiffs therein had  
 8 actually “lost money or property” of any sort. See *Walker*, 474 F. Supp.  
 9 2d at 1173 (finding plaintiff lacked vested interest where claim based on  
 10 “estimate for proposed work”; distinguishing case where claim based on  
 11 non-payment for work performed); *Buckland*, 155 Cal. App. 4th at 818 &  
 12 n.11 (noting *Buckland* “voluntarily [bought] [the] defendant’s product to  
 pursue a UCL action in the public interest,” and, consequently, her  
 purchase “[could not] reasonably be viewed as ‘lost’ money or property  
 under the standing requirement”).

By contrast, where a plaintiff has adequately alleged “loss of income,”  
 “loss of financial resources,” or “economic loss,” a number of courts,  
 subsequent to the enactment of the UCL standing requirement at issue  
 herein, have found such plaintiff has standing under the UCL,  
 irrespective of any such plaintiff’s inability to seek restitution from the  
 defendant named therein. See, e.g., *White v. Trans Union LLC*, 462 F.  
 Supp. 2d 1079, 1084 (CD. Cal. 2006) (holding, where plaintiff alleges  
 “loss of income” and seeks only injunctive relief, UCL “does not require  
 that the losses in question were the product of the defendant’s wrongful  
 acquisition of the plaintiff’s property”); *So. Cal. Housing Rights Ctr. v.*  
*Los Feliz Towers Homeowners Ass’n*, 426 F. Supp. 2d 1061, 1069 (CD.  
 Cal. 2005) (holding plaintiff Housing Rights Center had standing under  
 UCL “because it present[ed] evidence of actual injury based on loss of  
 financial resources in investigating [a discrimination] claim and diversion  
 of staff time from other cases to investigate the allegations [therein]”);  
*Aron v. U-Haul Co. of Cal.*, 143 Cal. App. 4th 796, 802-03 (2006)  
 (holding plaintiff had standing where plaintiff alleged “he suffered  
 economic loss by being required to purchase excess fuel” from third  
 party before returning rental truck to defendant).

*Fulford v. Logitech, Inc.*, 2009 U.S. Dist. LEXIS 42296 at \*2-6 (N.D.  
 Cal. May 8, 2009) (footnotes and some citations omitted).

1 Likewise, in *Swain v. Cach, LLC*, several months after Walker, the court  
2 noted that “the UCL does not require a loss of money or property that is eligible  
3 for restitution.” 2009 U.S. Dist. LEXIS 126340 at \*7 (N.D. Cal. Nov. 4, 2009). See  
4 also *Cedars-Sinai Med. Ctr. v. Global Excel Mgmt* (plaintiff hospital had UCL  
5 standing against a third party that evaluated claims referred by insurance  
6 companies) 2009 U.S. Dist. LEXIS 120411 at \*24 (C.D. Cal. Dec. 4, 2009).

7 Even if *Walker* stood for what Defendant claims, UCL standing is purely an  
8 issue of California law, and two decisions issued on April 19, 2010 from the  
9 California Court of Appeal are controlling.

10 In *Wallace v. Geico Gen. Ins. Co.*, 2010 Cal. App. LEXIS 532 (Apr. 19,  
11 2010), a plaintiff paid for repair work that Geico refused to cover. Plaintiff did not  
12 seek restitution of her premium, but an order that Geico pay for this work:

13 Wallace “suffered injury in fact” and “lost money or property” as a result  
14 of the practices at issue in this lawsuit. (§ 17204.) Specifically, Wallace  
15 was injured by paying for the repair work to her vehicle that GEICO did  
16 not agree to cover.

17 *Wallace*, 2010 Cal. App. LEXIS 532 at \*21.

18 In *Hale v. Sharp Healthcare*, 2010 Cal. App. LEXIS 530 (Apr. 19, 2010) the  
19 plaintiff adequately pled “injury in fact” where she was “imminently” obligated to  
20 pay a large medical bill she alleged was the result of defendant’s overcharging.  
21 Under Defendant’s erring “eligible for restitution” test she would not have UCL  
22 standing since she had not paid the bill. Instead, the court held “this is not the type  
23 of action Proposition 64 was intended to squelch” and the “contours of the injury-  
24 in-fact requirement, while not precisely defined, are very generous, requiring only  
25 that claimant allege some specific, ‘identifiable trifle’ of injury.” *Hale*, 2010 Cal.  
26 App. LEXIS 530 at \*15 (internal citations and quotation marks omitted).

1 DATED: April 22, 2010

Respectfully Submitted,

2  
3 /s/Gregory S. Weston

4 Gregory S. Weston

5 **THE WESTON FIRM**

6 GREGORY S. WESTON

7 JACK FITZGERALD

8 888 Turquoise Street

9 San Diego, California 92109

10 Telephone: 858 488 1672

11 Facsimile: 480 247 4553

12 **BECK & LEE BUSINESS TRIAL**  
13 **LAWYERS**

14 JARED H. BECK

15 ELIZABETH LEE BECK

16 Courthouse Plaza Building

17 28 West Flagler Street, Suite 555

18 Miami, FL 33130

19 Telephone: 305 789 0072

20 Facsimile: 786 664 3334

21 **Counsel for Plaintiff and the**  
22 **Proposed Class**

**CERTIFICATE OF SERVICE**

I, Gregory S. Weston, declare as follows:

I am a resident of the state of California, over the age of 18 and not a party to the within action. My business address is The Weston Firm, 888 Turquoise Street, San Diego, California, 92109. On April 22, 2010, I served the following document:

1. Plaintiffs' Surreply & Notice of New Authority in Opposition to Defendant Yelp! Inc.'s Motion to Dismiss Plaintiffs' First Amended Complaint by notice of Electronic Filing, which is a notice automatically generated by the CM/ECF system at the time the documents listed above were filed with this Court, to counsel listed by CM/ECF as "*ATTORNEY TO BE NOTICED.*"

I declare under penalty of perjury under the laws of the United States and the state of California that the foregoing is true and correct.

Executed on April 22, 2010 in San Diego, California.

s/ Gregory S. Weston  
Gregory S. Weston